



March 16, 2010

Senate Committee on Small Business, Emergency Preparedness,
Technical Colleges, and Consumer Protection

Assembly Bill 707

Representative Peter Barca

Chairman Wirch and members of the Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection; thank you for holding a public hearing on Assembly Bill 707, which will modernize the state's lien laws for self storage facilities.

Self storage or self-service storage facilities offer an opportunity for individuals to safely house and protect their belongings when they need a location to store them. In addition to those who simply have a need to store excess items, people frequently rent units when they are moving into a new home, getting married or around other life events. The self storage operators themselves are often local small business owners.

I had authored legislation to establish a lien law for self storage owners in my previous tenure in the legislature. That law established a method for facility owners to sell abandoned property from individuals who had stopped paying the rent on their self storage unit. Over time other issues have come to light and now it is time to modify this law to address these concerns so that our laws work better for the self storage owners and their customers. This proposal makes a series of changes intended to update the law and to allow for further options for the business to contact the renters.

Under this bill, if a rental agreement contains a limit on the value of the property that may be stored in the renter's storage unit, the limit can be assumed to be the maximum value of the property stored in that space. The owner must make this clear to the renter in the agreement at the time the rental agreement is signed.

If the fair market value of the property in the abandoned unit is under \$100, the owner may donate the property to charity or dispose of the property. Often times the property that is left behind are broken couches or other junk items that would be difficult to sell at a lien law sale. This is based on a similar law in the state of Washington which sets a \$300 limit on the value of the property.

Current law requires that owners must advertise a lien law sale of property once a week for two consecutive weeks by publication in a newspaper of general circulation. This bill allows for the owner to publish once in a newspaper of general circulation and in two public places. The internet may be used as one of these public places. Assembly Amendment 2 clarifies that the location where the notice will be posted on the internet must be stipulated in the

rental agreement, and is limited to the Wisconsin Self Storage Association website or the website of that individual facility.

When noticing such a sale, current law requires that the notice list the unit number where the property is being held. This bill removes this requirement. Because notices often list items that are located within the unit, such as televisions or other equipment, this provision is intended to prevent break-ins at storage facilities.

When sending notices to a renter that has failed to pay their rental fees, current law requires the second notice to be sent via certified mail. This bill allows for the option to send second notice to be sent either via certified mail or first class mail with a certificate of mailing.

Under the bill, only individuals who are listed on the rental agreement may file a lawsuit alleging that the self storage regulations have not been properly followed, except under the common law principal of conversion, which disputes that one has legal possession over the property. This is to prevent lawsuits from other individuals who had no contact or agreement with the facility owner, but may be storing items in a unit belonging to someone else.

The bill also includes portable self storage facilities, such as PODS (Portable On Demand Storage), which are typically located on the property of the renter rather than the owner, under the self storage regulations. Facilities of this type were included at the request of individuals from the industry to give clarity to their own similar lien law process.

Finally, the bill bolsters the common law definition of a commercially reasonable sale by offering two methods that would expressly meet the commercially reasonable definition.

Thank you for your time today and I would appreciate your support when Assembly Bill 707 comes for a vote before this committee.



SENATOR JEFF PLALE
SEVENTH SENATE DISTRICT

CHAIR
COMMITTEE ON COMMERCE, UTILITIES, ENERGY, AND RAIL

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**Testimony of Senator Jeff Plale
Assembly Bill 707
Senate Committee on Small Business, Emergency Preparedness, Technical Colleges,
and Consumer Protection
March 16, 2010**

Thank you, Chairman Wirsch and fellow members of the committee, for your consideration of Assembly Bill 707.

I am very pleased to testify in favor of this important bill that updates laws regarding self storage facilities.

This legislation was drafted at the request and with the assistance of the Wisconsin Self Storage Association.

Self storage facilities have always offered an option for people who have important belongings but lack adequate space to store them. Operators of such facilities are providing a valuable service for those in the community who need additional space on a long-term basis or for short-term moments of life transition.

This bill updates and clarifies the law to the benefit of both the self storage facility operators and the renters. It includes requirements that the maximum value of property in a self storage unit be specified in a rental agreement, clarifies the definition of a commercially reasonable sale, grants greater flexibility in the mailing requirements for notices to renters who fail to pay rental fees, limits authority to file a lawsuit to those who are listed on the rental agreement, includes portable self storage in Wisconsin's self storage laws, and modernizes options for operators when required to publicly post notices regarding sale of abandoned property.

These changes will help bring statute up to date with the current realities of the self storage industry.

Thank you for your time and consideration of AB 707. I am happy to answer any questions you may have regarding this bill.





WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE PETER BARCA
FROM: Dan Schmidt, Senior Analyst
RE: 2009 Assembly Bill 707
DATE: February 22, 2010

This memorandum, prepared at the request of your staff, discusses the technology available to demonstrate proof that a notice has been posted on the Internet. Specifically, you have asked this question in relation to the new posting requirements established under SECTION 9 of 2009 Assembly Bill 707, relating to self-service storage facility notices and procedures.

There are several ways one can seek to establish proof of date in posting a document on the Internet. The first alternative may simply be printing a copy of the web site where the post is made with a date stamp displaying the date of printing on the printout. This is easily done by selecting the date stamp function when printing on most web browsers. This is likely the simplest method available, but it may be less conclusive than other methods of date authentication.

Another option and perhaps the strongest way to demonstrate proof of posting date may be to request or subpoena the server records on which the notice was posted. This is likely a more costly alternative, but it is my understanding that this data, like telephone records, is generally well-accepted by the courts.

Other options may include the use of a database that provides a date stamp at the time the notice is added or the testimony or signed affidavit of an unbiased observer of the posting.

Regardless of method used to establish the date of posting, it will ultimately be up to the court to decide what constitutes proof of notice under the bill.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

DWS:ksm



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WNA Executive Director

PETER D. FOX

March 16, 2010

Senator Robert Wirsch, Chair

Senate Committee on Small Business, Emergency Preparedness, Technical
Colleges and Consumer Protection

316 South, State Capitol

PO Box 7882

Madison, WI 53707-7882

Dear Senator Wirsch and Members of the Committee:

On behalf of the members of the Wisconsin Newspaper Association (WNA), I thank you for the opportunity to provide testimony on 2009 Assembly Bill 707. We think it extremely appropriate that AB 707 should receive a public hearing before this committee which deals with both small-business and consumer-protection concerns. WNA objects to only Section 9 of the proposed legislation, those provisions that would alter how the self-service storage unit owner would make public notification of an impending sale of abandoned property.

First, there is a significant problem with how the bill initially altered a requirement for a Class 2 notice to a Class 1 notice and, as an "offset," how it would have provided certain public-notice posting rights to a private enterprise. Second, a "fatal flaw" amendment was added to AB 707 during Assembly consideration.

The requirement for the owner of a self-service storage business to make a public notification of intent to dispose of abandoned property is part of due process provisions governing landlord-tenant relations. As the renter of a storage unit must accept a written contract with the facility owner and comply with the owner's stipulations, the owner is obligated to make notification when seemingly abandoned property is to be discarded or sold for payment.

Notification via two sequential insertions into a newspaper of general circulation now is required as a means to "push out" notification of the impending action to as many members of the public as possible. This notification is made after attempts are made through the U.S. Postal Service. The rationale behind this requirement is to perhaps reach the renter himself, but also to inform family members, friends, neighbors, or other associates that an action is pending against someone they know. Importantly, notification not only informs the individual or entity most directly affected, but also the general public, which has an interest in knowing how public powers are being used.

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This notification via newspaper publication is one of many such legal requirements made of non-governmental entities that use public powers or institutions in some way. AB 707 would reduce this requirement specifically for owners of rental storage units, and allow the businesses to adopt a form of notification reserved for local units of government – that of providing public notice by physically posting written information in public places. State law provides that public postings shall be in three known locations accessible to the public. In municipalities that are subject to this requirement, those specific public places are consistent, long-standing and well-known to the population.

Why should storage unit operators be granted this authority? AB 707 permits a posting in two public places, one of which may be an Internet site. Where might the one physical posting be – on the front door or front gate of the storage business? Who would determine where that location would be?

The second part of the posting requirement initially provided by AB 707 permitted an Internet site but the bill was silent on who or what would own and operate that site. That site might have been a “Web site needle” in an “Internet haystack.” An amendment added to AB 707 in the Assembly stipulates that the specific Web site be either that of the Wisconsin Self Storage Association or one maintained by the owner of the facility in question. The amendment is an astonishing abdication of established public notification law to private interests! What’s next? Local government brought to you by a local grocery store or automobile dealership?

Newspaper notification of an impending sale of property assumed to be abandoned protect due process, and at least one court has already called into question the validity of Internet notices for purposes of fulfilling due process requirements. In 2007, the U.S. District Court for the Eastern District of California found no authority supporting the proposition that due process requirements are satisfied when a newspaper notice simply invites readers to check Websites for information regarding state seizure of their property instead of publishing the entire notice in the newspaper. The court went on to enjoin enforcement of California’s unclaimed property law until the state provided constitutionally adequate notice to property owners whose property was at risk of surrender. (*Taylor v Westly*, 488 F.3d 1197, 1201; CA 9th 2007) In Washington State, following a state supreme court ruling that Web notice was insufficient, legislation was enacted in 2007 that requires owners of condemned property to receive notice by publication in a legally recognized newspaper.

WNA recognizes that the Internet has revolutionized the way information is communicated and dispersed. However, while the Internet and its absolutely countless individual Web sites are a powerful tool for communicating many types of information that people seek out, its use in “pushing out” public notice information to citizens is limited by its unique character and the purpose of public notices.

Senator Robert Wirth, Chair
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and Consumer Protection

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The provisions of AB 707 ignore due-process requirements for adequate public notice. Those provisions are illogical, poor public policy and likely susceptible to early legal challenges. AB 707 should not be approved by this committee in its present form.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter D. Fox", written in a cursive style.

Peter D. Fox, Executive Director
Wisconsin Newspaper Association